

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

TERRICK TERRELL NOONER,

PLAINTIFF

and

DON WILLIAMS DAVIS

INTERVENOR PLAINTIFF

No. 5:06CV00110 SWW

VS.

LARRY NORRIS, Director,
Arkansas Department of Correction;
GAYLON LAY, Warden,
Arkansas Department of Correction;
WENDY KELLY, Deputy Director for
Health and Correctional Programs;
JOHN BYUS; Administrator, Correctional
Medical Services, Arkansas Department of Correction; and
OTHER UNKNOWN EMPLOYEES,
Arkansas Department of Correction

DEFENDANTS

ORDER

Before the Court are *pro se* motions filed by Plaintiff Terrick Terrell Nooner (“Nooner”) for voluntary dismissal (docket entries #46, #55, #59), and responses by Federal Public Defender Julie C. Brain and Defendants (docket entries #52, #61, #63). After careful consideration, the Court finds that Nooner’s *pro se* motions should be denied.

Represented by Federal Public Defender Julie C. Brain, Arkansas death-row inmate Terrick Terrell Nooner commenced this action pursuant to 42 U.S.C. § 1983, claiming that the procedures and protocol used for carrying out execution by lethal injection in Arkansas are unconstitutional. Death-row inmates Don William Davis and Jack Harold Jones, Jr. sought and

were granted leave to intervene as party-plaintiffs.¹

Nooner has personally submitted several documents for filing that contain allegations which have no bearing on the issues in this case. Nooner alleges, for example, that prison employees have injured his penis and contaminated his food. By orders entered August 8, 2005 and December 13, 2006, the Court advised Nooner that it would take no action with regard to his *pro se* submissions and that if he wished to pursue additional claims, he must do so in a separate proceeding (docket entry #39, #44).

On December 14, 2006, the Court received a document from Nooner entitled “Motion of Voluntary Dismissal” in which he states: “I demand voluntary dismissal of this civil action or you produce the DNA blood test so I can exploit my digestion is infected because defendant spiked food.” Docket entry #46. Nooner has filed two amendments to his motion. In his most recent amendment, filed April 5, 2007, Nooner complains that Plaintiff Davis was permitted to intervene in this case without his consent and that Plaintiffs Davis and Jones have interfered with his mental evaluations.

Defendants state they have no objection to Nooner’s motion. However, Federal Defender Brain asserts that that Nooner’s so-called motion for voluntary dismissal is simply another attempt by him to have the Court consider matters unrelated to this case. Attorney Brain reports that she is in regular contact with Nooner, and she has concluded that he has “no desire that the instant action be dismissed as to him *per se*.” Docket entry #52, at 3.

¹On June 12, 2006, Plaintiff Davis filed a motion for a preliminary injunction seeking a stay of his execution, which had been scheduled for July 5, 2006. By order entered June 26, 2006, the Court granted Davis’s motion, and on June 30, 2006, Defendants appealed the Court’s decision. The appeal is currently pending.

The Court agrees that the content of Nooner's filings indicate that his goal is to expand, rather than dismiss, his claims. Based on this finding, and Federal Defender Brain's report that, after consultation with her client, she has determined that he has no desire to withdraw from this case, Nooner's original motion for voluntary dismissal and his amended motions (docket entries #46, #55, #59) are hereby DENIED.

IT IS SO ORDERED THIS 7TH DAY OF MAY, 2007.

/s/Susan Webber Wright

UNITED STATES DISTRICT JUDGE